

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

JOSEPH JAMES FALCETTA, JR., #822447	§	
VS.	§	CIVIL ACTION NO. 6:13cv289
UNITED STATES OF AMERICA	§	CRIM. NO. 6:96cr59(01)

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the motion to vacate, set aside or correct Falcetta's sentence pursuant to 28 U.S.C. § 2255 should be dismissed for lack of jurisdiction because he did not have permission from the Fifth Circuit to file a second or successive petition. Falcetta has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Falcetta to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections by Falcetta are without merit. Falcetta's objections focused on the merits of his § 2255 motion; nonetheless, the Court may not consider the motion unless and until the Fifth Circuit grants him permission to file a second or successive § 2255 motion. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the Report and Recommendation (docket entry #3) is **ADOPTED**. It is further

**ORDERED** that Falcetta's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED** without prejudice for lack of jurisdiction. It is further

**ORDERED** that all motions not previously ruled on are hereby **DENIED**. It is finally

**ORDERED** that the Clerk of Court shall return unfiled any new § 2255 motions tendered by Falcetta unless he simultaneously shows that he has received permission from the Fifth Circuit to file a second or successive § 2255 motion.

**It is SO ORDERED.**

**SIGNED this 23rd day of May, 2013.**

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE